

Proposed
**RULES GOVERNING THE ARKANSAS SOIL NUTRIENT AND POULTRY LITTER
APPLICATION AND MANAGEMENT PROGRAM**

TITLE XXII

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**RULES GOVERNING THE ARKANSAS SOIL NUTRIENT AND POULTRY LITTER
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TITLE XXII

SUBTITLE I. GENERAL PROVISIONS

Section 2201.1 Purpose

The Arkansas Soil and Water Conservation Commission developed this Title to encourage prudent practices regarding the application and management of soil nutrients and poultry litter to protect and enhance the State's surface water quality. The primary goal of this Title is to maintain the benefits derived from the wise use of poultry litter, commercial fertilizers, and other soil nutrients while avoiding unwanted effects from excess nutrient applications on the waters within the State. In furtherance of this goal, these Rules provide requirements applicable to Nutrient Surplus Areas, Nutrient Management Plans, and Poultry Litter Management Plans designed to protect the waters within the State from adverse effects of excess nutrients.

Section 2201.2 Enabling and Pertinent Legislation

- A. Arkansas Code Annotated §§ 15-20-201 et seq., Arkansas Soil and Water Conservation Commission.
- B. Ark. Code Ann. §§ 15-20-901 et seq., Arkansas Poultry Feeding Operations Registration Act.
- C. Ark. Code Ann. §§ 15-20-1001 et seq., Arkansas Soil Nutrient Management Planner and Applicator Certification Act.
- D. Ark. Code Ann. §§ 15-20-1101 et seq. (Act 1061 of 2003), Arkansas Soil Nutrient Application and Poultry Litter Utilization Act.
- E. Ark. Code Ann. §§ 15-22-901 et seq., Arkansas Ground Water Protection Act.
- F. Ark. Code Ann. §§ 25-15-201 et seq., Arkansas Administrative Procedure Act.

Section 2201.3 Powers of the Commission

- A. The Arkansas Soil and Water Conservation Commission is authorized to develop all regulations necessary to implement the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, taking into consideration the following factors:
 - (1) The current and projected level of Nutrients in the soil within the area;
 - (2) The current or potential impacts of surplus Nutrients within the area;
 - (3) Litter produced and applied in the area;
 - (4) Commercial fertilizer, compost and other sources of Nutrients applied within the area;
 - (5) The current or projected Nutrient needs within the area, including the Nutrient level necessary to maintain soil fertility, current and future cropping patterns, and those crops' demand for Nutrients;
 - (6) The soil type, geology, hydrology and other physical characteristics of the area;
 - (7) The types of water bodies and the uses of the waters within the area; and

- (8) Any other relevant information necessary to affect the purposes of this subchapter.
- B. The Commission may delegate portions of the program developed hereunder for implementation to the Director, to Conservation Districts designated by the Commission, or both.
- C. The Commission may, in its discretion, defer mandatory compliance with portions of the program related to regulation of Nutrient Application, Nutrient Management Plans, and Poultry Litter Management Plans, for up to two (2) years if the Commission deems it necessary to allow development of Nutrient Management Plans and Poultry Litter Management Plans.
- D. The Commission may assess and collect fees, in an amount to be set from time to time by the Commission, to recover the costs of implementing and administering the provisions of these Rules.

Section 2201.4 Definitions

As used in this Title, the following terms shall have the definitions below unless otherwise specifically stated herein.

- A. “Arkansas Phosphorus Index” means the risk-based assessment tool referenced in Nutrient Management Plans developed to govern the terms and conditions under which Nutrients may be land-applied as defined in DeLaune, P.B., P.A. Moore, Jr., D.K. Carman, T.C. Daniel, and A.N. Sharpley. 2001. Development and validation of a phosphorus index for pastures fertilized with animal manure. [CD-ROM] In proceedings of International Symposium Addressing Animal Production and Environmental Issues.
- B. “Certified Nutrient Applicator” means any natural Person that has shown to the Commission that he or she has the minimal knowledge and technical competence necessary to properly apply Nutrients and has been certified by the Commission pursuant to Commission Rules Governing the Arkansas Nutrient Management Applicator Certification Program, Title XXI.
- C. “Certified Nutrient Planner” means any natural Person that has shown to the Commission that he or she has the minimal knowledge and technical competence necessary to prepare Nutrient Management Plans and has been certified by the Commission pursuant to Commission Rules Governing the Arkansas Nutrient Management Planner Certification Program, Title XX.
- D. “Commission” means the Arkansas Soil and Water Conservation Commission.
- E. “Compost” means a process which biologically stabilizes the mortalities from a Poultry Operation, making them suitable for disposal by land application. The process uses a simple mixture of dry Poultry manure (Litter), Poultry carcasses, and a bulking agent or aeration medium such as hay or straw. Only enough water is added to keep the material moist and the mixture should never be saturated. Compost does not include composted plant material with no animal carcasses or manure added that is used as a soil amendment and not principally for its Nutrient value.
- F. “Comprehensive Nutrient Management Plan” means an integrated plan that combines the required elements of both a Nutrient Management Plan and a Poultry Litter Management Plan.
- G. “Conservation District” means a Conservation District created under the Conservation Districts Law, Ark. Code Ann. §§14-125-101, et seq.
- H. “Crop” means any vegetative cover.
- I. “Director” means the Executive Director of the Arkansas Soil and Water Conservation Commission.

- J. “Land Application” means the spreading on or incorporation of Litter into the soil mantle primarily for beneficial purposes.
- K. “Litter” means byproducts associated with the confinement of Livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof.
- L. “Livestock” means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and Poultry.
- M. “Nutrient” means a substance or recognized plant Nutrient, element or compound that is used or sold for its plant nutritive content or its claimed nutritive value including, without limitation, substances in Litter, compost as fertilizer, commercially manufactured chemical and organic fertilizers, sewage sludge and combinations thereof.
- N. “Nutrient Application” means the process by which Persons apply Nutrients to soil or associated Crops.
- O. “Nutrient Applicator” means any Person who applies Nutrients to soil or associated Crops.
- P. “Nutrient Management Plan” means a documented record of how Nutrients will be managed on a Nutrient Management Unit prepared to guide and assist landowners and operators in the use of fertilizers, Litter, sewage sludges, compost and other Nutrient sources for maximum soil fertility and protection of the Waters Within the State.
- Q. “Nutrient Management Unit” means the field, group of fields, or other land units, that collectively include all land area on which Nutrients will or may be applied and managed pursuant to a Nutrient Management Plan.
- R. “Nutrient Surplus Area” means a defined geographic area, declared by Ark. Code Ann. § 15-20-1104 and described more specifically in Subtitle II of these Rules, which has been determined to be an area in which the soil concentration of one or more Nutrients is so high or the physical characteristics of the soil or area is such that continued application of the Nutrient to the soil could negatively impact soil fertility and the Waters Within the State.
- S. “Operator” means the Person(s) with control over the day-to-day operation of, or decision-making authority over, the facility, process, or physical location to which the term is applied.
- T. “Person” means any legal entity including, without limitation, any individual, partnership, company, association, fiduciary, corporation, limited liability company, cooperative, or any organized group of persons whether incorporated or not.
- U. “Poultry” means chickens, turkeys, ducks, geese, and any other domesticated birds.
- V. “Poultry Feeding Operation” means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.
- W. “Poultry Litter Management Plan” means the documented plan for use, disposal, and storage of Litter by Poultry Feeding Operations as further described in Subtitle IV of these Rules.
- X. “Protective Rate” or “Arkansas Protective Rate” means the application rate for a designated nutrient approved for usage by the Commission that provides for proper Crop utilization and prevention of significant impact to Waters Within the State.
- Y. “Waters Within the State” means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or

accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this State or any portion of this State.

Section 2201.5 Severability

If any provision of this Title or the application thereof to any Person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title shall be considered severable.

SUBTITLE II. NUTRIENT SURPLUS AREAS

Section 2202.1 Declared Nutrient Surplus Areas

Act 1061 of 2003 (codified at Ark. Code Ann. § 15-20-1104) declared the following areas to be Nutrient Surplus Areas:

- (1) The Illinois River watershed, included within Benton, Washington, and Crawford counties;
- (2) The Spavinaw Creek watershed, included within Benton County;
- (3) The Honey Creek watershed, included within Benton County;
- (4) The Little Sugar Creek watershed, included within Benton County;
- (5) The upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County;
- (6) The Poteau River watershed, included within Scott, Sebastian, and Polk counties;
- (7) The Mountain Fork of the Little River watershed, included within Polk County; and
- (8) The upper White River watershed above its confluence with the Buffalo River, included within Baxter, Benton, Carrol, Washington, Madison, Franklin, Newton, Searcy, Marion, and Boone counties.

Section 2202.2 Geographic Boundaries of Nutrient Surplus Areas

A. The Commission further defines the geographic boundaries of the designated Nutrient Surplus Areas listed in Section 2202.1 by utilizing the National Datasets for Natural Resource Analysis. Hydrologic Units have been classified based on data compiled by United States Geological Survey, Natural Resources Conservation Service and others. Each hydrologic unit is identified by a unique hydrologic unit code (HUC). Detailed maps and digital coverage of the boundaries are available at the Commission office or District office. Hydrologic unit codes for the Nutrient Surplus Areas are as follows:

- | | |
|-----------------------------------|--------------|
| (1) Illinois River watershed: | HUC 11110103 |
| (2) Spavinaw Creek watershed: | HUC 11070209 |
| (3) Honey Creek watershed: | HUC 11070206 |
| (4) Little Sugar Creek watershed: | HUC 11070208 |

(5) Upper Arkansas River watershed (which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County):

HUC 11110104

(6) Poteau River watershed: HUC 11110105

(7) Mountain Fork of the Little River watershed: HUC 11140108

(8) Upper White River watershed above its confluence with the Buffalo River:

HUC 11010001 and HUC 11010003

B. See Appendix A for general coverage map.

Section 2202.3 Requirements Applicable to Nutrient Surplus Areas

A. Except as provided in Subsection F of this Section, it shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is performed in compliance with a Nutrient Management Plan, prepared by a Certified Nutrient Planner, or at the Protective Rate set forth in Section 2202.5.

B. Except as provided in Subsection F of this Section, it shall be unlawful for any owner or Operator of land within a Nutrient Surplus Area to allow the application of Nutrients to soils or associated Crops on that land unless the Nutrient Application is performed in compliance with a Nutrient Management Plan, prepared by a Certified Nutrient Planner, or at the Protective Rate set forth in Section 2202.5.

C. It shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is done in compliance with the time, place, and manner restrictions determined necessary by the Commission and set forth in Section 2202.4.

D. Except as provided in Subsection F of this Section, it shall be unlawful for any Person other than a Certified Nutrient Applicator to make a Nutrient Application within a Nutrient Surplus Area.

E. Except as provided in Subsection F of this Section, Nutrient Application within a Nutrient Surplus Area shall be documented in records maintained by the Nutrient Applicator, and the owner and Operator of the land where Nutrient Application is made, in sufficient detail to demonstrate that the Nutrient Application was conducted in compliance with these Rules. Such records shall be maintained for a minimum of five years or for such longer period of time as may be required by an approved Nutrient Management Plan, and shall be available for inspection by the Commission or its agents upon request.

F. (1) Nutrient Application within a Nutrient Surplus Area on residential lands of two and one-half (2.5) acres or less ("Residential Nutrient Application") shall be applied at a rate not to exceed the Protective Rate set forth in Section 2202.5 and in compliance with the time, place, and manner restrictions set forth in Section 2202.4, or in compliance with an approved Nutrient Management Plan.

(2) A Nutrient Management Plan is not required for Residential Nutrient Application as defined in this Subsection, but may be voluntarily obtained.

(3) The landowner or resident making a Residential Nutrient Application, as defined in this Subsection, is not required to be a Certified Nutrient Applicator, but is required to maintain documentation of each Nutrient Application for a minimum of five years sufficient to demonstrate compliance with the Time, Place, and Manner Restrictions in Section 2202.4 and either the Protective Rate requirements in Section 2202.5 or an approved Nutrient Management Plan.

G. It shall be unlawful for any Poultry Feeding Operation to operate within a Nutrient Surplus Area unless the Poultry Feeding Operation develops and implements a Poultry Litter Management Plan or applies nutrients at the Protective Rate.

Section 2202.4 Time, Place, and Manner Restrictions

A. The time, place, and manner restrictions in this Section apply to all Nutrient Applications within a Nutrient Surplus Area.

B. Nutrients shall be evenly distributed over application sites. Application shall be made only at the rates and in the manner specified in a Nutrient Management Plan, where applicable. If no Nutrient Management Plan is required by these Rules, Nutrient Application shall not exceed the Protective Rate set forth in Section 2202.5.

C. Nutrient Application shall not be undertaken when soil is saturated, frozen, covered with ice or snow, during rainy weather, or when significant precipitation is reasonably anticipated in the next twenty-four hours.

D. Nutrients shall not be applied to slopes with a grade of more than fifteen percent (15%) or in any manner that will allow Nutrients to enter Waters Within the State or to run onto adjacent property.

E. Application of Nutrients shall not be made within one hundred feet of streams (including intermittent streams), ponds, lakes, springs, sinkholes, wells, waterways, irrigation systems, or drainage systems.

Section 2202.5 Protective Rate

A. All Nutrient Applications within a Nutrient Surplus Area must comply with the Protective Rate set forth in this Section unless a different rate is specified in an approved Nutrient Management Plan.

B. The agronomic rate or other rate of a designated nutrient that provides for proper crop use and prevention of significant impact to waters within the state. Specific rates are set out in Appendix B of these rules. The protective rates are derived from Tables 6, 8, 9, 11, and 12 of Moore, P.A. and J. Barrentine. 2004. Determining the protective rates of poultry litter and commercial fertilizers for Arkansas. Lead Agency, USDA-ARS, Poultry Production and Product Safety Research Unit. Cooperating Agency, Crop Soil & Environmental Science Department, University of Arkansas. Funding Agency, Arkansas Soil & Water Conservation Commission.

SUBTITLE III. NUTRIENT MANAGEMENT PLANS

2203.1 Obtaining a Nutrient Management Plan

- A. Any Person seeking a Nutrient Management Plan should contact the local Conservation District and request information on how to obtain a plan. The Person seeking a Nutrient Management Plan may also contact third parties who have obtained certification from the Commission to develop plans.
- B. As long as the Person receiving the plan verifies that his or her plan was developed by a Certified Nutrient Planner, the Person has satisfied the Commission's requirement to have a Nutrient Management Plan for Nutrient Application.
- C. Any plan obtained by a Person prior to the effective date of these rules will be deemed sufficient to meet the requirements of this Title so long as the plan was developed using the Arkansas Phosphorus Index.

Section 2203.2 Substitution of Existing Regulatory Permit for Nutrient Management Plan

- A. If a Nutrient Application process within a Nutrient Surplus Area is a part of a process or system for which a permit has been issued and is in effect pursuant to the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §§ 8-4-101 et seq., or other similar federal or state law, and if the permit contains conditions regulating Nutrient Application acceptable to the Conservation District, then the permit may be substituted for and serve as the Nutrient Management Plan.
- B. Before such permit is effective as a substitute for a Nutrient Management Plan, the permittee must submit a complete copy of the permit to the local Conservation District and request approval in writing.
- C. Upon approval by the Conservation District, the permit shall be substituted for and serve as the Nutrient Management Plan required by these Rules, and all other requirements of these Rules shall apply.

Section 2203.3 Contents of a Nutrient Management Plan

- A. A Nutrient Management Plan shall contain sufficient documentation to demonstrate that Nutrients will be managed within the Nutrient Management Unit in compliance with these Rules and in a manner sufficient to protect the Waters Within the State.
- B. A proposed Nutrient Management Plan shall address, at a minimum, the following major elements: (1) general site information, (2) applicable permits and certifications, (3) Nutrient Application site information, (4) Nutrient Application plans, (5) actual activity records, and (6) operation and maintenance. The precise content of a Nutrient Management Plan will vary as necessary to meet the needs of the specific Nutrient Management Unit addressed. Unless they are clearly inapplicable, a Nutrient Management Plan shall address all of the items listed under the six major elements shown below in this Section.

1. General site information

- A. Names, phone numbers, and addresses of the owner(s) and Operator(s) of all lands within the Nutrient Management Unit.

- B. Location of site: legal description of all lands in the Nutrient Management Unit, driving instructions from the nearest municipality, street address, and emergency 911 coordinates.
 - C. Sketch or aerial photograph of farmstead and all fields in the Nutrient Management Unit.
 - D. Operation procedures.
 - E. Existing documentation of present facility components that would aid in evaluating existing conditions.
2. Applicable permits and certifications
- A. Federal, State, or local permits or ordinances, if applicable.
 - B. Operator or manager certifications, if applicable.
 - C. Certification number of Certified Nutrient Planner responsible for developing plan.
 - D. Records of inspections or site assessments, if applicable.
3. Nutrient Application site information
- A. Date plan prepared.
 - B. Written agreements, if any, relating to Nutrient Application.
 - C. Aerial maps of Nutrient Application areas.
 - D. Individual field maps with marked conservation features, setbacks, buffers, waterways, Poultry houses or facilities, surface water features, and environmentally sensitive areas such as sinkholes, wells, gullies, tile inlets, etc.
 - E. Landowner and Operator names, addresses, and phone numbers.
 - F. Eight-digit watershed codes for Nutrient Application sites.
 - G. Specific and unique field identification codes, if applicable.
 - H. Land use designation, if applicable.
 - I. Soil map with appropriate interpretations.
 - J. Calculations, assumptions, interpretations, and narrative description demonstrating appropriate application of the Phosphorus Index in development of the proposed Nutrient Application rates.
 - K. Land treatment practices planned and applied and level of treatment they provide.
4. Nutrient Application
- A. Crop types, realistic yield targets, and expected Nutrient uptake amounts, if available.
 - B. Application equipment descriptions and methods of application.
 - C. Expected application seasons and estimated days of application per season.
 - D. Proposed Nutrient Application rates; i.e., amounts per acre (volume in gallons or tons per acre, and pounds of plant available nitrogen, phosphorus as P_2O_5 , and potassium as K_2O per acre), and detailed information on the calculations, assumptions, and interpretations used to determine application rates.
 - E. Estimate of acres needed to apply Litter generated on the Nutrient Management Unit or by any related Poultry Feeding Operation, if applicable, consistent with application of the Phosphorus Index and respecting any guidelines published for nitrogen and other Nutrient loading limits.
5. Actual activity records
- A. soil tests – not more than 3 years old.

- B. Litter test annually for each individual Poultry house supplying litter.
- C. Planned and applied rates, methods of application, and timing (month and year) of all sources of Nutrients applied.
- D. Current and planned Crop rotation.
- E. Records of any spill events.

6. Operation and Maintenance

- A. Reasonably detailed operation and maintenance procedures and schedules for all aspects of the Nutrient Management Plan including, by way of example, holding systems, Litter storage, Land Application, application equipment, soil and Nutrient source sampling techniques, etc.
- B. Description of recordkeeping procedures including records for date and location of each Nutrient Application, amount of Litter or other Nutrients applied, phosphorus content of the soil, phosphorus content of Litter or other Nutrient source, application rates used, source of Litter or other Nutrients, and total acreage of Nutrient Applications.
- C. Designation of when periodic review and revision of the Plan will occur. See Section 2203.5.

Section 2203.4 Additional plan content

The Certified Nutrient Planner should incorporate additional plan requirements as appropriate if required by other specific regulatory or incentive programs which apply to a specific operator.

Section 2203.5 Review and Revision of Nutrient Management Plans

- A. Nutrient Management Plans shall be reviewed by the owner or Operator of the Nutrient Management Unit at least annually to determine if adjustments or modifications are needed.
- B. Plans would need to be modified if the facilities were expanded, total acreage receiving nutrient application changes, use of acreage changes, or if facilities are under control of a different operator.
- C. Nutrient Management Plans shall be reviewed thoroughly by a Certified Nutrient Planner every five years and a report of the five-year review shall be provided to the local Conservation District within one hundred twenty (120) days following the end of the fifth annual growing period identified in the Plan. The five-year review shall update the existing plan with recent soil testing data. All other information required to be included in a Nutrient Management Plan in Section 2203.3 of this Subtitle shall be updated with current information.

Section 2203.6 Recordkeeping Requirements

- A. Records required to be compiled or kept by these Rules or by the provisions of any approved Nutrient Management Plan shall be maintained by the owner and Operator of the lands within the Nutrient Management Unit for a minimum period of five years and shall be available for inspection by the Commission or its agents upon request. Such records shall not be public records.

B. Records required to be compiled or kept by these Rules or by the provisions of any approved Nutrient Management Plan relating to the activities of a Nutrient Applicator shall be maintained by the Nutrient Applicator for a minimum period of five years and shall be available for inspection by the Commission or its agents upon request. Such records shall not be public records.

SUBTITLE IV. POULTRY LITTER MANAGEMENT PLANS AND COMPREHENSIVE NUTRIENT MANAGEMENT PLANS

Section 2204.1 Obtaining a Poultry Litter Management Plan

A. Any Person seeking a Poultry Litter Management Plan should contact the local Conservation District and request information on how to obtain a plan. The Person seeking a Poultry Litter Management Plan may also contact third parties who have obtained certification from the Commission to develop plans.

B. As long as the Person receiving the plan verifies that his or her plan was developed by a Certified Nutrient Planner, the Person has satisfied the Commission's requirement to have a Poultry Litter Management Plan for Nutrient Application.

C. Any plan obtained by a Person prior to the effective date of these rules will be deemed sufficient to meet the requirements of this Title so long as the plan was developed using the Arkansas Phosphorus Index.

Section 2204.2 Contents of a Poultry Litter Management Plan

A. A Poultry Litter Management Plan shall contain sufficient documentation to demonstrate that Litter and associated Nutrients will be managed in compliance with these Rules and in a manner sufficient to protect the Waters Within the State.

B. A proposed Poultry Litter Management Plan shall address, at a minimum, the following major elements: (1) general site information, (2) production information, (3) applicable permits and certifications, (4) Land Application site information, (5) Land Application plans, (6) actual activity records, (7) mortality disposal procedures, and (8) operation and maintenance. The precise content of a Poultry Litter Management Plan will vary as necessary to meet the needs of the specific Poultry Feeding Operation(s) addressed in the Plan. Unless they are clearly inapplicable, a Poultry Litter Management Plan shall address all of the items listed under the eight major elements shown below in this Section.

1. General site information

A. Names, phone numbers, and addresses of the owner(s) and Operator(s) of the Poultry Feeding Operation.

B. Location of Poultry Feeding Operation: legal description of all lands and facilities in the Poultry Feeding Operation, driving instructions from the nearest municipality, street address, and emergency 911 coordinates.

C. Sketch or aerial photograph of Poultry Feeding Operation.

D. Operation procedures specific to the Poultry Feeding Operation, including an emergency action plan for Litter storage and handling.

E. Any other information requested by the Commission.

2. Poultry production information

- A. Poultry types, phases of production, and length of confinement for each type.
- B. Animal count and average weight.
- C. Calculated Litter volumes.
- D. Litter storage type, volume, and approximate time period of storage.
- 3. Applicable permits and certifications
 - A. Federal, State, or local permits or ordinances, if applicable.
 - B. Operator or manager certifications, if applicable.
 - C. Certification number of Certified Nutrient Planner responsible for developing Poultry Litter Management Plan.
 - D. Records of inspections or site assessments, if applicable.
- 4. Land Application site information
 - A. Date plan prepared.
 - B. Written agreements, if any, relating to Litter transfers and Land Application.
 - C. Aerial maps of Land Application areas.
 - D. Individual field maps with marked conservation features, setbacks, buffers, waterways, Poultry houses or facilities, surface water features, and environmentally sensitive areas such as sinkholes, wells, gullies, tile inlets, etc.
 - E. Landowner and Operator names, addresses, and phone numbers.
 - F. Eight-digit watershed codes for the Land Application sites.
 - G. Specific and unique field identification codes, if applicable.
 - H. Land use designation, if applicable.
 - I. Soil map with appropriate interpretations.
 - J. Calculations, assumptions, interpretations, topographic maps, and narrative description demonstrating appropriate application of the Phosphorus Index in development of the proposed Land Application rates.
 - K. Land treatment practices planned and applied and level of treatment they provide.
- 5. Land Application
 - A. Crop types.
 - B. Application equipment descriptions and methods of application.
 - C. Expected application seasons and estimated days of application per season.
 - D. Proposed Land Application rates; i.e., amounts per acre (volume in gallons or tons per acre, and pounds of plant available nitrogen, phosphorus as P_2O_5 , and potassium as K_2O per acre), and detailed information on the calculations, assumptions, and interpretations used to determine application rates.
 - E. Estimate of acres needed to apply Litter generated by the Poultry Feeding Operation, consistent with application of the Phosphorus Index and respecting any guidelines published for nitrogen and other Nutrient loading limits.
- 6. Actual activity records
 - A. soil tests – not more than 3 years old.
 - B. Litter test annually for each individual Poultry house.
 - C. Planned and applied rates, methods of application, and timing (month and year) of all sources of Nutrients applied.
 - D. Current and planned Crop rotation.
 - E. Actual Crop yield and harvest from Land Application sites.

- F. Records of internal inspections for Litter storage, handling, and application system components.
- G. Records of any spill events.
- H. Records of all Land Applications, both within and outside of Nutrient Surplus Areas.
- I. For any Litter not land applied, records demonstrating that the Litter was converted to a non-nutrient use or other use acceptable to the Commission.
- 7. Mortality disposal
 - A. Plan for mortality disposal including approved site for catastrophic die-off.
 - B. Methods and equipment used to implement the disposal plan, including any applicable permits.
- 8. Operation and Maintenance
 - A. Reasonably detailed operation and maintenance procedures and schedules for all aspects of the Poultry Litter Management Plan including, by way of example, Litter storage and handling systems, Land Application, application equipment, soil and Litter sampling techniques, etc.
 - B. Description of recordkeeping procedures including records for date and location of each Land Application, amount of Litter or other Nutrients applied, phosphorus content of the soil, phosphorus content of Litter or other Nutrient source, application rates used, source of Litter or other Nutrients, and total acreage of Land Applications.
 - C. Designation of the annual growing period that will be used for purpose of periodic review and revision of the Plan. See Section 2204.3.

Section 2204.3 Review and Revision of Poultry Litter Management Plans

- A. Poultry Litter Management Plans shall be reviewed by the owner or Operator at least annually to determine if adjustments or modifications are needed.
- B. Plans shall be modified if facilities are expanded, total acreage receiving nutrient application changes, use of acreage changes, or if facilities are under control of a different operator.
- C. Poultry Litter Management Plans shall be reviewed thoroughly by a Certified Nutrient Planner every five years, and a report of the five-year review shall be provided to the Commission within one hundred twenty days following the end of the fifth annual growing period identified in the Plan. The five-year review shall update the existing plan with recent soil testing data. All other information required to be included in a Poultry Litter Management Plan in Section 2204.2 of this Subtitle shall be updated with current information.

Section 2204.4 Recordkeeping Requirements

- A. Records required to be compiled or kept by these Rules or by the provisions of any approved Poultry Litter Management Plan shall be maintained by the owner and Operator of the Poultry Feeding Operation for a minimum period of five years and shall be available for inspection by the Commission or its agents upon request. Such records shall not be public records.

B. Records required to be compiled or kept by these Rules or by the provisions of any approved Poultry Litter Management Plan relating to the activities of a Nutrient Applicator shall be maintained by the Nutrient Applicator for a minimum period of five years and shall be available for inspection by the Commission or its agents upon request. Such records shall not be public records.

Section 2204.5 Comprehensive Nutrient Management Plans

A. If the owner or Operator of a Poultry Feeding Operation within a Nutrient Surplus Area is also the owner or Operator of a Nutrient Management Unit or other land where Nutrient Application is made, that person may satisfy the requirements for both a Poultry Litter Management Plan and a Nutrient Management Plan by preparing a single consolidated Comprehensive Nutrient Management Plan.

B. A Comprehensive Nutrient Management Plan shall include all requirements for a Poultry Litter Management Plan set forth in Subtitle IV and all requirements for a Nutrient Management Plan set forth in Subtitle III of these Rules. Elements common to both types of plans need to be included only once, without duplication, in the Comprehensive Nutrient Management Plan.

C. All requirements for Poultry Litter Management Plans apply to Comprehensive Nutrient Management Plans.

SUBTITLE V. SALE OR TRANSFER OF LITTER

Section 2205.1 No Responsibility of Transferor for Use of Litter After Transfer

Upon the sale or transfer of Litter from a Poultry Feeding Operation within a Nutrient Surplus Area to any user, the Poultry Feeding Operation shall not be responsible for the use of the Litter by the purchaser or other transferee. Notwithstanding the foregoing, the Poultry Feeding Operation remains responsible for use of the Litter in compliance with this Title until actual possession of the Litter transfers to the purchaser or transferee and the Litter is removed from the Poultry Feeding Operation premises.

Section 2205.2 Responsibility of Litter User

Any person receiving Litter from a Poultry Feeding Operation within a Nutrient Surplus Area shall use the Litter in compliance with the approved Poultry Litter Management Plan held by the Poultry Feeding Operation that supplied the Litter unless an approved Nutrient Management Plan required by these Rules applies to the use, in which case the person shall use the Litter in compliance with the applicable Nutrient Management Plan. It is the responsibility of the person receiving Litter from a Poultry Feeding Operation to obtain a copy and determine the requirements for complying with the applicable Poultry Litter Management Plan.

SUBTITLE VI. LITTER UTILIZATION COMMITTEE

Section 2206.1 Activation of Committee

In Nutrient Surplus Areas, the Commission shall activate a Litter Utilization Committee to facilitate utilization or removal of excess Litter in a manner to promote beneficial use of excess Litter while protecting the Waters Within the State.

Section 2206.2 Appointment by Director

The Director shall appoint members to serve on the Litter Utilization Committee including poultry feeding operators, Commission staff, and other persons knowledgeable in Litter management.

Section 2206.3 Committee Goals

The Litter Utilization Committee shall consider methods of removal, valuation, and distribution of Litter. A primary goal of the Committee shall be to identify alternative beneficial uses for Litter that would result in adequate compensation to Litter producers.

SUBTITLE VII. ENFORCEMENT

Section 2207.1 Commission Right to Inspect

- A. Agents of the Commission may enter upon and inspect private property to determine compliance with the requirements of this Title.
- B. Prior to entering a facility where Poultry is regularly kept, agents of the Commission shall provide the owner or operator with twenty-four (24) hours notice.
- C. Documentation of bio-security measures taken and bio-security certification received by the Commission agent, including a bio-security log book, shall be made available to the owner or operator upon request.
- D. Upon notice of disease outbreak by the Arkansas Livestock and Poultry Commission, inspection under this Title shall be automatically suspended until notification by the Arkansas Livestock and Poultry Commission that it is safe to resume inspections.

Section 2207.2 Civil Penalties for Violation of This Title

- A. The Commission may impose civil penalties against any Person for violation of any provision of this Title, in an amount not to exceed two thousand five hundred dollars (\$2,500.00) per violation. Each day that a violation exists may be considered a separate violation.
- B. Civil penalties collected for violations of this Title shall be deposited in the Arkansas Water Development Fund and used in furtherance of the nutrient management program, including provisions of these Rules.
- C. Civil penalties collected shall be cash funds when received by the Treasurer of the State and shall be handled as set forth in Ark. Code Ann. § 15-20-1113(b)(2).

D. If a Person against whom a civil penalty has been imposed by the Commission, as authorized by Ark. Code Ann. § 15-20-1113 and these Rules, fails to pay the penalty to the Commission, the Commission may file an action to collect the civil penalty in the circuit court of the county in which the Poultry Feeding Operation is located or the offending action occurred.

Section 2207.3 Administrative Enforcement Procedures

A. Upon complaint or suspicion of suspected violation of any provision of this Title, Commission staff may investigate or cause an investigation to be undertaken and may recommend disciplinary action to the Director.

B. After reviewing evidence provided by Commission staff regarding a possible violation, the Director may issue an Administrative Consent Order to the Person suspected of violation, stating the suspected violation and the recommended enforcement action, including any proposed civil penalty.

C. The Person receiving an Administrative Consent Order may choose to sign the Administrative Consent Order and thereby agree to the penalties and other terms and conditions contained within the Order.

D. If the Person receiving an Administrative Consent Order fails to respond in writing to the Commission within ten days after receipt of the Administrative Consent Order, and receipt has been confirmed by a certified mail receipt or proof of personal service, the Person will be deemed to have agreed to the penalties and other terms and conditions contained within the Order, which shall become final.

E. Upon receipt of an Administrative Consent Order, the Person to whom the Order is directed may object and request a hearing before the Commission by delivering such request in writing to the Commission within ten days, setting forth the reasons why the Person disagrees with the allegations in the Order and any proposed penalty. The hearing will be conducted in accordance with Commission Rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order.

F. The Commission will not take final administrative action against a Person accused of violating this Title or Ark. Code Ann. §§ 15-20-1101 et seq. until the accused Person has consented to an Administrative Consent Order or until the Person has had an opportunity for a hearing to review the suspected violation and proposed penalty under Commission Rules, Title I. The final decision of the Commission shall include findings of fact and conclusions of law, and shall otherwise conform to the requirements of Ark. Code Ann. § 25-15-210.

G. The Commission and the Director may issue subpoenas as provided in Ark. Code Ann. § 15-22-208.

Section 2207.4 Judicial Review

The executed Administrative Consent Order or Commission decision shall constitute final agency action for the purpose of judicial review. Judicial review of final agency action shall be as provided by the Arkansas Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201 et. seq.

**SUBTITLE VIII. NO CONFLICT WITH ARKANSAS WATER AND
AIR POLLUTION CONTROL ACT**

Section 2208.1 Liquid Animal Waste Management Systems

A. Nothing in this Title shall supersede the requirement that liquid animal waste management systems comply with the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §§ 8-4-101 et seq., or regulations adopted under that Act.

B. Nothing in this Title shall supersede the requirements of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §§ 8-4-101 et seq., for waste disposal systems using land application as a part of the waste disposal process.

Section 2208.2 Nutrient and Litter Management Activities

Except as provided in Section 2208.1, Nutrient and Litter management activities conducted in compliance with this Title shall not be subject to regulation under the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §§ 8-4-101 et seq., or regulations adopted under that Act.

Section 2208.3 Activities Noncompliant With This Title

A. The Commission may determine that certain Nutrient and Litter management activities regulated under the provisions of this Title are not in compliance with this Title and thus constitute placing sewage, industrial waste, or other waste in a location where it is likely to cause pollution to the Waters Within the State.

B. If the Commission makes a determination as described in Subsection A of this Section, the Nutrient and Litter management activities so determined shall be subject to regulation under the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §§ 8-4-101 et seq., and regulations adopted under that Act.

Appendix A: Nutrient Surplus Areas, Numbers Indicate Hydrologic Unit Codes.

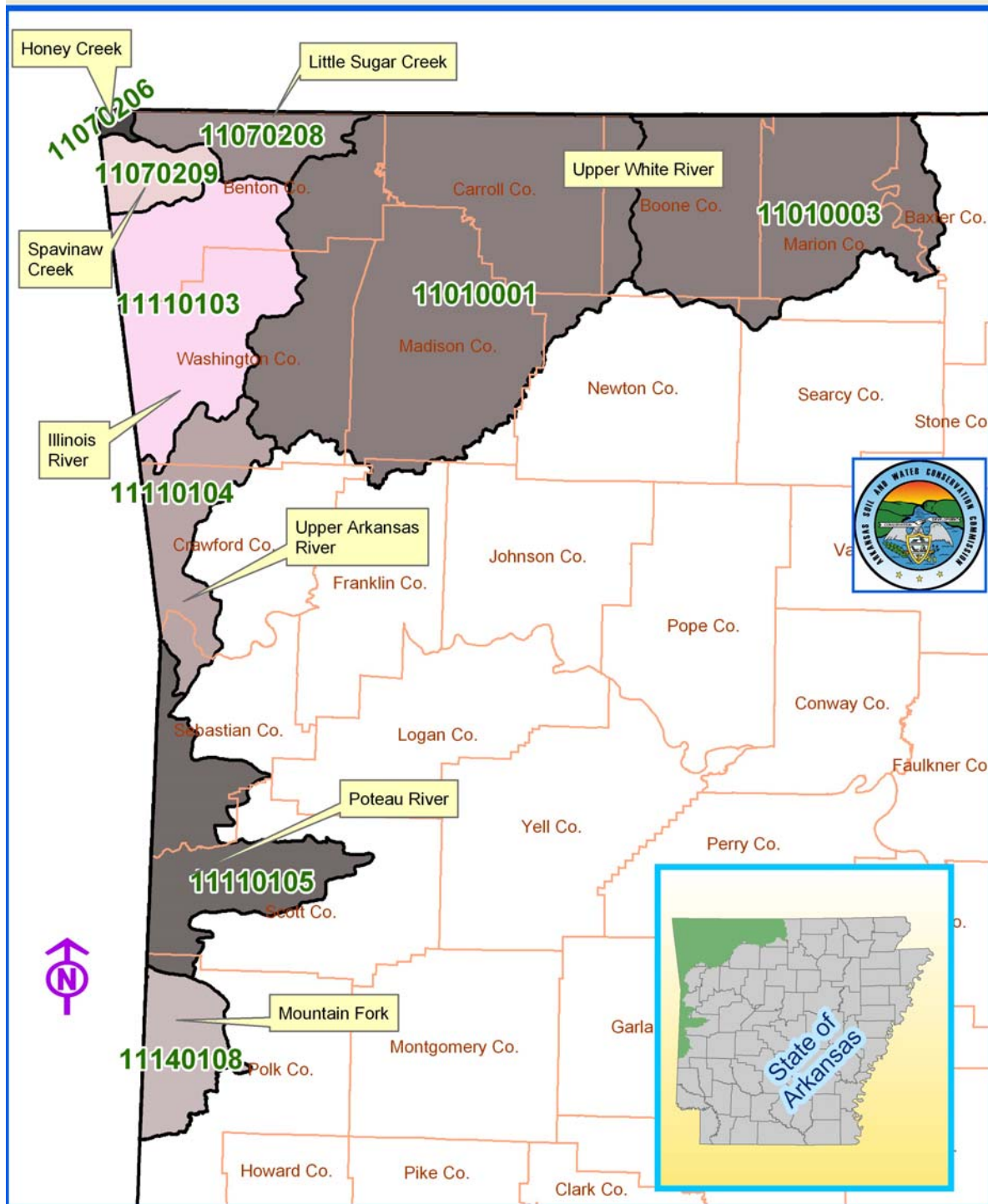


Table 5 - Maximum poultry litter application rates allowed with the Arkansas Phosphorus Index for normal conditions (moderate runoff class, less than 1 ton erosion/acre, surface applied in spring, hayed & grazed). Alum-treated litter rates were calculated conservatively using 50% reduction in soluble P, rather than 75% reduction for the two ton rate. Values are in tons/acre.

| Soil test P (lbs P/acre) | Normal Litter | 1200 lbs alum/flock | 2000 lbs alum/flock | 4000 lbs alum/flock |
|-----------------------------|---------------|------------------------|------------------------|------------------------|
| 0 – 100 | 3.0 | 3.4 | 4.0 | N rate |
| 100 – 300 | 2.8 | 3.2 | 3.7 | N rate |
| 300 – 400 | 2.6 | 3.0 | 3.5 | N rate |
| 400 – 600 | 2.3 | 2.6 | 3.1 | N rate |
| 600 – 800 | 2.0 | 2.3 | 2.7 | 4.0 |
| 800 - 1000 | 1.6 | 1.8 | 2.1 | 3.2 |
| 1000 - 1100 | 1.5 | 1.7 | 2.0 | 3.0 |

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Arkansas Soil and Water Conservation Commission, Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program, Title XXII.

Tables derived from:

Moore, P.A. and J. Barrentine. 2004. Determining the protective rates of poultry litter and commercial fertilizers for Arkansas. Lead Agency, USDA-ARS, Poultry Production and Product Safety Research Unit. Cooperating Agency, Crop Soil & Environmental Science Department, University of Arkansas. Funding Agency, Arkansas Soil & Water Conservation Commission.

Table 6 - Protective rate of poultry litter as a function of soil test phosphorus and alum use. Calculated with the Arkansas Phosphorus Index under severe conditions (high runoff class, 1-2 tons/acre erosion, surface applied in spring, hayed & grazed). Alum-treated litter rates were calculated conservatively using 50% reduction in soluble P, rather than 75% reduction for the two ton rate. Values are in tons/acre.

| Soil test P (lbs P/acre) | Normal Litter | 1200 lbs alum/flock | 2000 lbs alum/flock | 4000 lbs alum/flock |
|-----------------------------|---------------|------------------------|------------------------|------------------------|
| 0 – 100 | 2.3 | 2.6 | 3.1 | 4.6 |
| 100 – 300 | 2.0 | 2.3 | 2.7 | 4.0 |
| 300 – 400 | 1.8 | 2.1 | 2.4 | 3.6 |
| 400 – 600 | 1.5 | 1.7 | 2.0 | 3.0 |
| 600 – 800 | 1.1 | 1.3 | 1.5 | 2.2 |
| 800 - 1000 | 0.8 | 0.9 | 1.1 | 1.6 |
| 1000 - 1100 | 0.7 | 0.8 | 0.9 | 1.4 |

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Arkansas Soil and Water Conservation Commission, Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program, Title XXII.

Tables derived from:

Moore, P.A. and J. Barrentine. 2004. Determining the protective rates of poultry litter and commercial fertilizers for Arkansas. Lead Agency, USDA-ARS, Poultry Production and Product Safety Research Unit. Cooperating Agency, Crop Soil & Environmental Science Department, University of Arkansas. Funding Agency, Arkansas Soil & Water Conservation Commission.

Table 8 - Protective rate of commercial P fertilizer for grasses and clover.
Values in lbs P₂O₅/acre.

| | Low soil test P (0–50 lbs/acre) | Med. soil test P (50–100 lbs/acre) | High soil test P (> 100 lbs/acre) | Soil test P not known |
|---|------------------------------------|--|--------------------------------------|--------------------------|
| Fertilizer application rate (lbs P ₂ O ₅ /acre) | 80 | 40 | 0 | 0 |

Table 9 - Protective rate for commercial P fertilizer for grasses and legumes.
Values are in lbs product/acre.

| Fertilizer Type | Low soil test P (0–50 lbs/acre) | Med. soil test P (50–100 lbs/acre) | High soil test P (> 100 lbs/acre) | Soil test P not known |
|--|------------------------------------|---------------------------------------|---|--------------------------|
| 0 – 46 – 0 | 175 | 88 | 0 | 0 |
| 13 – 13 – 13 | 600 | 300 | 0 | 0 |
| 10 – 20 – 10 | 400 | 200 | 0 | 0 |
| Miracle Grow (20 – 27 – 5) | 300 | 150 | 0 | 0 |
| Scott's Weed & Feed (28 – 3 - 3) | Base rate on nitrogen needs | Base rate on nitrogen needs | 0 | 0 |

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Arkansas Soil and Water Conservation Commission, Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program, Title XXII.

Tables derived from:

Moore, P.A. and J. Barrentine. 2004. Determining the protective rates of poultry litter and commercial fertilizers for Arkansas. Lead Agency, USDA-ARS, Poultry Production and Product Safety Research Unit. Cooperating Agency, Crop Soil & Environmental Science Department, University of Arkansas. Funding Agency, Arkansas Soil & Water Conservation Commission.

Table 11 – Protective rate for commercial N fertilizer. Values in lbs N/acre.

| Forage Type | Low soil test P (0–50 lbs/acre) | Med. soil test P (50–100 lbs/acre) | High soil test P (> 100 lbs/acre) | Additional applications |
|---|------------------------------------|--|---|--|
| Warm season grasses | 80 | 80 | 80 | Add 50-60 lbs N/acre as needed |
| Cool season grasses | 45 | 45 | 50 | Add 50-60 lbs N/acre as needed |
| Improved warm season pastures | 45 | 45 | 50 | |
| Alfalfa | 0 | 0 | 0 | |
| Warm season grass/clover | 0 | 0 | 0 | Add 80 lbs N/acre when clover is dormant |
| Cool season grass/clover | 60 | 60 | 60 | |
| Cool season grass on warm season grass | 60 | 60 | 60 | Add 60-80 lbs N/acre as needed |
| Warm season perennial legume | 0 | 0 | 0 | |

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Arkansas Soil and Water Conservation Commission, Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program, Title XXII.

Tables derived from:

Moore, P.A. and J. Barrentine. 2004. Determining the protective rates of poultry litter and commercial fertilizers for Arkansas. Lead Agency, USDA-ARS, Poultry Production and Product Safety Research Unit. Cooperating Agency, Crop Soil & Environmental Science Department, University of Arkansas. Funding Agency, Arkansas Soil & Water Conservation Commission.

Table 12 – Protective rate for commercial N fertilizer. Values in lbs N/acre.

| Forage Type | N Rate | Additional Applications |
|--|--------|--|
| Warm season grasses | 80 | Add 50-60 lbs N/acre as needed |
| Cool season grasses | 45 | Add 50-60 lbs N/acre as needed |
| Improved warm season pastures | 45 | |
| Alfalfa | 0 | |
| Warm season grass/clover | 0 | Add 80 lbs N/acre when clover is dormant |
| Cool season grass/clover | 60 | |
| Cool season grass on warm season grass | 60 | Add 60-80 lbs N/acre as needed |
| Warm season perennial legume | 0 | |

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Arkansas Soil and Water Conservation Commission, Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program, Title XXII.

Tables derived from:

Moore, P.A. and J. Barrentine. 2004. Determining the protective rates of poultry litter and commercial fertilizers for Arkansas. Lead Agency, USDA-ARS, Poultry Production and Product Safety Research Unit. Cooperating Agency, Crop Soil & Environmental Science Department, University of Arkansas. Funding Agency, Arkansas Soil & Water Conservation Commission.